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EXAMINER

BAUGH, APRIL L

ART UNIT

PAPER NUMBER

2158

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/447,400	CHEN ET AL.
	Examiner April L Baugh	Art Unit 2158

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is **FINAL**.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-14 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 22 November 1999 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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## **DETAILED ACTION**

### ***Drawings***

1. Figures 1-4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 3, 4, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,119,143 to Dias et al. in view of Smith  
  
Dias et al. teaches a computer system and method for load balancing. Referring to claim 1, Dias et al. teaches in a communication system network having a plurality of servers (column 1, line18), each of said plurality of servers having a load level based on serving a number of clients in said communication system network (column 4, lines 2-3), a method comprising the steps of: grouping said plurality of servers into a first and second server groups (see column 2, lines 59-61 and column 3, lines 54-55), wherein said first server group has a load level less than load level of said second server group

(column 5, lines 35-42); calculating a time period T; assigning load to a server (column 1, lines 23-25) selected from servers in said first server group from an initial time until expiration of said time period T (see column 3, lines 3-5 and column 3, lines 65-67).

Dias et al. does not teach to assign load to a server after time T. Smith teaches assigning load to a server selected from servers in said first and second server groups after expiration of said time period T (see column 14, lines 43-47 and column 15, lines 15-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. by assigning load to a server from the first and second server groups after time T because to implement load balancing there must be an interval of time for each server group where all servers within that group are assigned a load.

Regarding claim 2, Dias et al. teaches in a communication system network having a plurality of servers (column 1, line18), each of said plurality of servers having a load level based on serving a number of clients in said communication system network (column 4, lines 2-3), a method comprising the steps of: grouping said plurality of servers into a plurality of server groups G0 through G2 (see column 2, lines 59-61 and column 3, lines 54-55), wherein server groups G0 through G2 respectively have load levels progressively from a least amount of lead level to a most amount of load level (column 5, lines 35-42); calculating a time period T1; assigning load to a server (column 1, lines 23-25) selected from servers in said server group G0 from an initial time until expiration of said time period T1 (see column 3, lines 3-5 and column 3, lines 65-67).

Dias et al. does not teach of multiple time periods or how to assign load to a server during time periods other than the initial time period. Smith teaches calculating a

time period T1 and T2, wherein said time period T2 is longer than said time period T1; assigning load to a server selected from servers in said server groups G0 and G1 after expiration of said time period T1; assigning load to a server selected from servers in said server groups G0, G1 and G2 after expiration of said time period T2 (see column 14, lines 43-47 and column 15, lines 15-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. by having multiple time periods and assigning load to a server from each server group during each time period after the initial time period because to implement load balancing there must be an interval of time for each server group where all servers within that group are assigned a load.

Referring to claim 3, Dias et al. teaches in a communication system network having a plurality of servers (column 1, line 18), each of said plurality of servers having a load level based on serving a number of clients in said communication system network (column 4, lines 2-3), a method comprising the steps of: grouping said plurality of servers into a plurality of server groups G0 through Gk (see column 2, lines 59-61 and column 3, lines 54-55), wherein said server groups G0 through Gk respectively have load levels progressively from a least amount of load level to a most amount of load level (column 5, lines 35-42); calculating a time period T1; assigning load to a server (column 1, lines 23-25) selected from servers in said server group G0 from an initial time until expiration of said time period T1 (see column 3, lines 3-5 and column 3, lines 65-67).

- Dias et al. does not teach of multiple time periods or how to assign load to a server during time periods other than the initial time period. Smith teaches calculating a plurality of time periods T1 through Tk; assigning load, after expiration of each of said

time periods T1 through Tk measured from said initial time, to a server selected from servers in the server groups from G0 and at least one other group selected from said server groups G1 through Gk (see column 14, lines 43-47 and column 15, lines 15-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. by having multiple time periods and assigning load to a server from each server group during each time period after the initial time period because to implement load balancing there must be an interval of time for each additional server group where all servers within that group are assigned a load.

Regarding claim 4, Dias et al. teaches in a communication system network having a plurality of servers (column 1, line 18), each of said plurality of servers having a load level based on serving a number of clients in said communication system network (column 4, lines 2-3), a method comprising the steps of: grouping said plurality of servers into a plurality of server groups G0 through Gk (see column 2, lines 59-61 and column 3, lines 54-55), wherein said server groups G0 through Gk respectively have load levels progressively from a least amount of load level to a most amount of load level (column 5, lines 35-42); calculating a time period T1 corresponding to said server group G1; assigning load to a server (column 1, lines 23-25) selected from servers in said server group G0 from an initial time until expiration of said time period T1 (see column 3, lines 3-5 and column 3, lines 65-67).

Dias et al. does not teach of multiple time periods corresponding to multiple server groups nor how to assign load to a server during time periods other than the initial time period. Smith teaches calculating a plurality of time periods T1 through Tk

corresponding to said server groups G1 through G<sub>k</sub>; assigning load, after expiration of each of said time periods T<sub>1</sub> through T<sub>k</sub> measured from said initial time, to a server selected from servers in a combination of servers including said server group G<sub>0</sub> and at least one other server group, in said server groups G1 through G<sub>k</sub>, corresponding to an expiring time period (see column 14, lines 43-47 and column 15, lines 15-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. by having multiple time periods that correspond to the server groups and assigning load to a server selected from servers in a combination of servers including said server group G<sub>0</sub> and at least one other server group during each time period after the initial time period because to implement load balancing there must be an interval of time for each additional server group where all servers within that group are assigned a load this way the load is distributed evenly over all servers within each server group.

Regarding claim 7, Dias et al. teaches the method as recited in claim 4 wherein said grouping of said plurality of server groups G<sub>0</sub> through G<sub>k</sub> is based on similarity of load levels among said plurality of servers (column 1, lines 23-25).

Referring to claim 8, Dias et al. teaches the method as recited in claim 4 wherein at least one load assignment in said assigning load to a server in said server group G<sub>0</sub> and said assigning load to a server selected from servers in said combination is performed according to around robin selection method (column 5, lines 10-11).

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,143 to Dias et al. in view of Smith as applied to claims 1, 2, 3, 4, 7, and 8 above, and further in view of Adelman et al.

Regarding claim 5, Dias et al. in view of Smith does not teach that the plurality of time periods T1 through Tk each are based on a difference between load levels of at least two server groups. Adelman et al. teaches the method as recited in claim 4 wherein said plurality of time periods T1 through Tk each is based on a difference between load levels of at least two server groups in said plurality of server groups G0 through Gk (column 8, lines 36-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by having the time periods be based on the difference between load levels of the server groups because the time periods limit the amount of time to assign load to the servers of multiple server groups therefore the time period needs to be longer for servers (from the higher end server groups) being assigned a greater load and as the higher end server groups are included the load difference will increase which will increase the time period.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,143 to Dias et al. in view of Smith as applied to claims 1, 2, 3, 4, 7, and 8 above, and further in view of Attanasio et al. and Fine.

Referring to claim 6, Dias et al. in view of Smith does not teach of receiving an update of the load level of the servers and regrouping the servers, recalculating the time periods, resetting the initial time, and reassigning the load based on this update. Attanasio et al. and Fine teach the method as recited in claim 4 further comprising the step of:

receiving an update of load level of at least one of said plurality of servers in said plurality of server groups G0 through Gk (column 3, lines 46-48 of Attanasio et al.); repeating said grouping to produce a new plurality of server groups G0 through Gk based on said update of load level (column 3, lines 60-62 of Attanasio et al.); repeating said calculating said plurality of time periods to produce a new plurality of time periods T1 through Tk corresponding to said new plurality of server groups G0 through Gk; resetting said initial time to a reset initial time (column 10, lines 1-2 and column 16, lines 25-27 of Fine), and assigning load to a server selected from servers in said new server group G0 from said reset initial time until expiration of said new time period T1; assigning load, after expiration of each of said new time periods T1 through Tk measured from said reset initial time, to a server selected from servers in a combination of servers including said new server group G0 and at least one other server, in said new server groups G1 through Gk, corresponding to an expiring time period (column 8, lines 25-27 of Attanasio et al.). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by receiving an update of the load level of the servers and regrouping the servers, recalculating the time periods, resetting the initial time, and reassigning the load based on this update because with this system there is a chance of an imbalance of the load if servers within a server group are assigned a load greater than the load threshold for that server group therefore a server load update and the repetition of grouping servers and assigning load is needed to keep the load balanced within the system.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,143 to Dias et al. in view of Smith as applied to claims 1, 2, 3, 4, 7, and 8 above, and further in view of Applicant Admitted Prior Art (AAPA).

Dias et al. in view of Smith does not teach of load assignment according to a random selection method. AAPA teaches the method as recited in claim 4 wherein at least one load assignment in said assigning load to a server in said server group G0 and said assigning load to a server selected from servers in said combination is performed according to a random selection method (pg.4, lines 8-10 and pg. 11, lines 10-11). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by assigning load to the servers according to a random selection method because this helps to avoid the server groups moving together as in the round robin method.

7. Claims 10, 11, 12, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,143 to Dias et al. in view of Smith as applied to claims 1, 2, 3, 4, 7, and 8 above, and further in view of Yu.

Regarding claim 10, Dias et al. in view of Smith does not teach that the time period is based on the load levels of at least two server groups, a request arrival rate, and a server service rate. Yu teaches the method as recited in claim 4 wherein each of said plurality of time periods T1 through Tk is based on load levels of at least two server groups selected from said plurality of server groups G0 through Gk, a request arrival rate and a server service rate (column 2, lines 12-14 and column 3, lines 18-21 and lines 34-36). Therefore, it would have been obvious to one having ordinary skill in the art at the

time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by having the time period be based on the load levels of at least two server groups, a request arrival rate, and a server service rate because the time periods limit the amount of time to assign load (where the amount of load to assign is based on the arrival rate) to the servers of multiple server groups therefore the time period needs to be longer for servers from the higher end server groups (with higher service rate and load capacity) and as the higher end server groups are included the load difference will increase which will increase the time period.

Referring to claims 11 and 12, Dias et al. in view of Smith does not teach of the request arrival rate being substituted for an average value. Yu teaches the method as recited in claim 10 wherein said request arrival rate is substituted for an average request arrival rate [of a combination of servers] of said plurality of servers (column 6, line 56 and column 7, lines 7-8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by having the request arrival rate be substituted for an average value because the request arrival rate is used in calculating the time period that limits the amount of time to assign load to the servers of multiple server groups therefore an average request arrival rate must be calculated based on the multiple server groups.

Regarding claims 13 and 14, Dias et al. in view of Smith does not teach of the server-service rate being substituted for an average value. Yu teaches the method as recited in claim 10 wherein said server service rate is substituted for an average service rate [of a combination of servers] of said plurality of servers (column 5, lines 55-56 and

column 5, lines 66-67 through column 6, line 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the computer system and method for load balancing of Dias et al. in view of Smith by having the server service rate be substituted for an average value because the server service rate is used in calculating the time period that limits the amount of time to assign load to the servers of multiple server groups therefore an average server service rate must be calculated based on the multiple server groups.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to April L Baugh whose telephone number is 703-305-5317. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R Sheikh can be reached on 703-305-9648. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3719 for regular communications and 703-305-3719 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

ALB  
July 31, 2002



DAVID WILEY  
PRIMARY EXAMINER